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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,011	11/21/2003	Ivonne U. Irizarry	JAM837	8743

7590

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EXAMINER

LEUNG, PHILIP H

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/718,011

Applicant(s)

IRIZARRY ET AL.

Examiner

Philip H Leung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 10-16 is/are rejected.
- 7) ☒ Claim(s) 6-8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/21/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152).
- 6) ☐ Other: \_\_\_\_.

### DETAILED ACTION

1. The drawings filed on 11/21/2003 are acceptable.
2. In claims 1 and 17, it is suggested to rewrite the term "microwave" at line 2 as "microwave oven".
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
4. Claims 1, 2, 5, 10 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Drabick (US 5,509,601) (cited by the applicant).

The claimed structure does not define over Drabick as it shows a food cover assembly for positioning over food comprising a stand (10) including panel (15) having a top side and a bottom side, a plurality of legs (11-14) being attached to and extending downwardly from said bottom side, each of said legs being positioned generally adjacent to a peripheral edge of the panel; a covering (16) including a top wall and a peripheral wall (the side edges of the top 16 which cover the corresponding side edges 17a, 17b and 17c of the compartment of box 17) being attached to and extending downwardly therefrom, said top wall having generally the same shape as said panel, said top wall having a shortest diameter having a length greater than a shortest diameter of said panel; and wherein said stand may be positioned over food (18) and said

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covering positioned over said stand such that said peripheral wall extends downward (see Figures 1-3 and col. 2, line 39 – col. 3, line 16). It is pointed out that the limitation “being cooked in a microwave” in the preamble is only a statement of intended use and adds little patentability weight to the structure as Drabick can also be used in a microwave oven for heating its food 18 in the box 17. In regard to claim 5, it also meets the claimed limitation that “the plurality of legs includes three legs” as its number of legs is four.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 3, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drabick (US 5,509,601), in view of Wall (US 5,077,050).

Drabick shows a food cover assembly except for the shape of the legs and the panel of the stand 10. Wall shows that it is well known to form an article for supporting the lid of a

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cardboard box including a lid support 8 and three legs 12 with pointed bottom end (see Figure 1 and col. 2, line 63 – col. 3, line 12). It would have been obvious to an ordinary skill in the art to modify Drabick to use a spacer having a circular top with three pointed legs for better support of the box cover, in view of the teaching of Wall.

7. Claims 1-5 and 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanlon (US 4,801,773), in view of Wall (US 5,077,050).

Hanlon shows a food cover assembly for positioning over food being cooked in a microwave oven comprising a paper covering 10 having a frusto-conical shape and including a top wall 12 and a pleated peripheral wall 14 being attached to and extending downwardly (see Figure 1-3 and col. 4, lines 12- 61). It does not show the use of a stand for supporting the covering. Wall shows that it is well known to form an article for supporting a lid for covering food including a lid support 8 and three legs 12 with pointed bottom end (see Figure 1 and col. 2, line 63 – col. 3, line 12). It would have been further obvious to one of ordinary skill in the art to modify Hanlon to use a stand inside the cover and over the food to better support the cover from sagging down on to the food item, in view of the teaching of Wall.

8. Claim 17 is allowed.

9. Claims 6-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Vitale (US 4,498,586) and Chiba (US 5,028,754) are further cited to show covering devices with similar claimed features.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip H Leung whose telephone number is (703) 308-1710.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Pothier can be reached on (703) 308-0265. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Philip H Leung  
Primary Examiner  
Art Unit 3742

P.Leung/pl  
4-02-2004